



U.S. Environmental Protection Agency

This document is one section from the Response to Public Comments Document regarding the “Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs,” published in August 2004. You can find the Response to Comments document in its entirety at <http://www.epa.gov/owow/oceans/habitat/artificialreefs/index.html>.

**Response to Public Comments Regarding the
“Draft National Guidance: Best Management
Practices for Preparing Vessels Intended to Create
Artificial Reefs”**

**Responses to Comment #s
EPA-HQ-OW-2004-0003-0015
To
EPA-HQ-OW-2004-0003-0021**

May 2006

**Response to Public Comments regarding the
Draft National Guidance: Best Management Practices for Preparing
Vessels Intended to Create Artificial Reefs
69 Fed. Reg. 46141 (August 2, 2004)**

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0015

Author Date: September 30, 2004

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Florida Fish and Wildlife Conservation Commission

Comment # J-1:

09/30/2004 06:09 PM

To: Group Ow-Docket@EPA

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Subject: Individual comments on Best Management Practices for Ship Cleaning

**Dodrill Comment on Artificial Reef BMPs 093004.doc

The attached comments represent my personal individual comments/suggestions specific to the EPA-MARAD draft BMPs where comments are due to EPA by tomorrow. Earlier FWC as an agency made some more general comments on the BMPS in the context of a federal consistency review that were forwarded to the Florida State Clearing House located within the Florida Department of Environmental Protection.

Jon Dodrill

Response to Comment # J-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0015, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0016 (Commenter Identification “J-I”) for the comment letter submitted, and EPA’s response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0016

Author Date: September 30, 2004

Author: Jon Dodrill*

Florida Fish and Wildlife Conservation Commission

* These comments do not represent an agency wide response but are an individual submittal based upon my personal review of the BMPs.

Comment # J-I-1:

September 30. 2004

Individual Comments on EPA-MARAD Draft Document: *Draft National Guidance: Best Management Practices for preparing Vessels Intended to Create Artificial Reefs.*

Reference: Public Announcement in Federal Register, Vol. 69, No. 147, Monday August 2, 2004. Docket ID No.OW-2004-0003.

General Comments

Based upon my 11 years of personal involvement with the State of Florida’s Artificial Reef Program, I strongly support the concept of uniform national standards for preparation of vessels to be utilized as artificial reefs for purposes of habitat enhancement, as potential fisheries/resource management tools, for recreational and commercial fishing, and for sport diving activities.

Response to Comment # J-I-1:

The best management practices described in the BMP guidance document will serve as national guidance for the preparation of obsolete and decommissioned military and commercial vessels for use as artificial reefs. As vessel-to-reef projects are becoming a more common management option for obsolete MARAD and Navy vessels, the development of this guidance is timely. Prior to this BMP guidance, no guidance of this kind had been available.

Comment # J-I-2:

A formal request to develop such guidelines was made over 12 years ago by the State of Virginia’s artificial reef coordinator. Development of consistent national vessel cleaning standards for artificial reefing has been subsequently supported by other coastal states’ marine fisheries management agencies who are members of either the Gulf or Atlantic States Marine Fisheries Commissions.

Naval and U.S. Maritime Administration (MARAD) obsolete vessels should not be held to higher cleaning standards than the range of civilian vessels currently sunk by Coastal Gulf and U.S. States as artificial reefs. Civilian vessels have the same potential pollutant issues as military vessels. All vessels regardless of their origin should be cleaned to the same standards as set forth in the BMPs unless site-specific circumstances demand even stricter cleaning standards. This should be very clearly stated in the BMPs. Some individuals have the impression that these are standards/guidelines applicable only to military ships and have no bearing on civilian vessels.

Response to Comment # J-I-2:

Per the draft BMP guidance document, the second paragraph of the Executive Summary states the document's applicability as follows: "Options for managing obsolete and decommissioned military and commercial vessels include reuse of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea." To address the above comment, EPA incorporated further clarification as to the applicability of the guidance into the final guidance as follows:

"This document discusses the preparation of obsolete and decommissioned military and commercial vessels when employing the vessel management option of artificial reefing."

The first paragraph of the Introduction also refers to the applicability of the document as follows: "Several options exist for managing obsolete and decommissioned military and commercial vessels. These options include re-use of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea. This document discusses the vessel management option of artificial reefing." Further clarification of the guidance's applicability to both military and civilian vessels is not necessary and beyond the scope of Congress' direction to EPA (and MARAD).

Comment # J-I-3:

There should be discussed in the BMPs a means for regulatory agencies to verify through a documentation process that the vessels cleaned for reefing have in fact been cleaned in accordance with the BMPs. In the case of a federal entity such as the Navy or MARAD overseeing vessel cleaning, or a state agency itself, the EPA regional office in the region where the vessel is to be sunk should be able to review a completion report describing exactly what was done to the vessel. A signed certification of completion of cleaning to BMP standards and compliance with state or federal laws should be submitted to the appropriate EPA regional office by the entity responsible for the cleaning. In the case of a local coastal government or local private sponsor overseeing vessel cleanup, a similar completion report should be submitted to the state environmental regulatory agency and/or the fisheries management agency housing the state's artificial reef program.

Response to Comment # J-I-3:

In keeping with Section 3516 of the National Defense Authorization Act for Fiscal Year 2004, this guidance document addresses only recommended clean-up practices for vessels

that are intended to be placed as artificial reefs. It neither endorses such placement nor does it address the potential availability or environmental effects associated with alternatives to placement of vessels as artificial reefs. This guidance does not substitute for any statute or regulation, nor is it a regulation itself. By its terms, the guidance itself does not impose binding requirements on any federal agency, States, other regulatory or resource management authorities, or any other entity.

Among other things, the document includes mechanisms to enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels. It should be noted, however, that under 10 U.S.C. 7306b(c), the Secretary of the Navy must ensure that the preparation of a vessel (that is stricken from the Naval Vessel Register) for use as an artificial reef is conducted in accordance with the environmental best management practices in this guidance. This latter statutory requirement, not today's guidance document itself, governs the Navy's application and use of this document.

The complete text of the National Defense Authorization Act for Fiscal Year 2004 is provided in Appendix A "*Federal Statutes Related to the Transfer of Obsolete MARAD and Navy Vessels for Use as Artificial Reefs*" of the BMP guidance document.

When preparing a vessel that is intended to serve as an artificial reef, documenting the clean-up procedures used and the contaminants that will remain onboard the vessel is a key element of the BMP guidance document. More specifically, describing how the BMP narrative clean-up goals were met and conducting a visual inspection are needed to determine whether and how the vessel has been cleaned to the level recommended in this guidance document so the vessel can be managed appropriately. A recommended checklist for documenting vessel clean-up using the BMP guidance document has been incorporated in the final guidance document as an appendix (Appendix F "Recommended Checklist for Documenting Vessel Clean-up Using this Guidance"). Because the checklist is recommended, rather than required, EPA did not incorporate the Comment that documentation be signed and/or certified, only that the name and position title of the person who prepared the recommended document be identified, along with contact information. To the extent the documentation would be relied on for compliance with other applicable state and federal laws, those other laws may require signature and/or certification.

A vessel inspection by qualified personnel should be conducted to confirm satisfactory clean-up/preparation. It also should be noted that applicable regulatory regimes may require such an inspection. For example, achieving and verifying satisfaction of the BMP clean-up goals could help support permit applications under the Clean Water Act Section 404 or the Rivers and Harbors Act Section 10, if a permit application is submitted to the United States Army Corps of Engineers. Further, robust BMP documentation might prove useful for demonstrating consistency with Coastal Zone Management Act programs, as well as for any other State or local certifications necessary to carry out a vessel-to-reef project. Also, EPA officials may find BMP documentation useful as part of their review under EPA certification authority per the Liberty Ship Act. (Note: this Act only applies to DOT/MARAD-owned obsolete vessels intended for use as an artificial reef for the

conservation of marine life.)

In the process of preparing a vessel for reefing, there are requirements and regulations, including permit processes, appropriate disposal of waste generated during vessel clean-up preparation, and vessel inspections by appropriate authorities to consider and that are not highlighted in this document.

Comment # J-I-4:

As a final general comment, worker safety issues were intentionally not addressed in the BMPs. Worker safety is a key component of vessel preparation and one that has been ignored to some degree either intentionally or out of ignorance when civilian vessels have been prepped by volunteers, etc. Since these BMPs are also supposed to cover civilian vessels, it would be helpful to have an additional appendix that could provide in bullet form key safety issues and concerns to be particularly aware of. You could still have a qualifier that this is not an OSHA safety manual but these are some basic safety thoughts to be aware of: (a. clothing appropriate for the job-hard hats, steel toes shoes, eye protection etc), identification of obvious hazards (holes cut through deck, etc), use of cutting torches in enclosed environments, tracking personnel on worksite, etc. The SUPSHIP BATH onsite supervisors who deal with scrapping, or reefing issues could easily put together a couple pages of “heads up” safety items based on their years of first hand experience.

Response to Comment # J-I-4:

Worker safety issues are a significant component of any vessel-to-reef project. However, the BMP guidance does not address worker safety issues because the statutory direction for development of the BMP guidance document is to provide national, environmentally-based best management practices (for the preparation of vessels to be sunk with the intention of creating artificial reefs in permitted artificial reef construction areas). Although EPA recognizes the importance of worker health and safety issues, the Agency’s expertise lies in environmental matters, and not necessarily worker health and safety. Those with an interest in worker safety issues and concerns should consult other relevant documents, such as those prepared by OSHA, State or local safety agencies, and other relevant EPA documents. For example, EPA’s *A Guide for Ship Scrappers – Tips for Regulatory Compliance* presents important information related to environmental and worker safety and health issues for ship scrapping/ship breaking operations when handling specific hazardous materials. This document can be accessed via the World Wide Web at <http://www.epa.gov/oecaerth/resources/publications/civil/federal/shipscrapguide.pdf>.

Specific Comments

Comment # J-I-5:

1. **Breakwaters/Barriers (p. 36)** I don’t support the use of vessels as proposed in the Best

Management Practices (BMPS) as breakwater/shore protection structures. In nonmilitary applications, vessels should not be utilized to replace materials more specifically engineered to meet a site-specific breakwater objective. Use of military vessels in shallow water littoral environments as wave attenuation barriers to protect beaches, anchorage sites or manmade coastal structures would have only short-term value. Review the fate of the post D-Day 1944 breakwaters off the Normandy Beaches that were composed of sunken vessels. Although initially achieving their military objective of protecting the offloading of men and materials onto the beaches, subsequent storm events compromised intermediate to long-term effectiveness of the sunken vessels as a breakwater.

Response to Comment # J-I-5:

EPA accepts the comment and the suggested change has been incorporated in the final document; text referring to the placement of vessels to serve as breakwaters or other types of barriers has been deleted from the guidance.

Comment # J-I-6:

Debris fields generated in a high-energy surf environment could migrate under storm conditions onto adjacent beaches. Past hurricanes in the western Florida Panhandle have cast up on the beach former reef materials such as metal aircraft parts, car body frames, and most recently, during Hurricane Ivan (September 2004) over 1,500 automobile tires on Okaloosa County Beaches (NW Florida). These tires were deployed off an adjacent County miles offshore over twenty-five years ago. The Breakwater/Barrier section of the BMPs cites a number of reasons that it is **not** a good idea to use vessels as breakwaters (stability issues, premature structural failure, etc). What entity is promoting their use for such purposes?

Response to Comment # J-I-6:

Initially, the concept of using vessels for other in-water uses such as breakwaters or other types of barriers was suggested by MARAD. Upon further consideration of this in-water use of obsolete vessels, both MARAD and EPA decided to strike from the final BMP guidance document all discussions that pertain to using vessels as breakwaters or other types of barriers. The final BMP guidance document does not present the placement of vessels as breakwaters or other types of barriers as a management option for obsolete vessels.

Comment # J-I-7:

Recommendation: Eliminate the section discussing use of vessels as breakwaters/barriers altogether. As an alternative if appropriate, replace with “Military Applications of Sunken Vessels” or “Other In-Water Uses”. The Navy’s Reef-ex vessel sinking operations for training, and cleaning standards for vessels sunk during such training were never mentioned in the BMPs. Navy Reef-ex sinking vessel cleaning preparations should be mentioned and it should be stated that either the Navy will or will not conform to the same BMP standards as vessels used for shallow water artificial reefing. If there are in fact additional intended wartime military applications that

may be pursued elsewhere in the world as has historically occurred (i.e. creating disruptions to navigation by using sunken vessels to block harbor entrances and narrow shipping corridors, creating vessel breakwaters to facilitate amphibious landings, etc.) then possibly this should be discussed in a military applications section or “other in-water uses” section along with the Navy’s Reef-ex program.

Response to Comment # J-I-7:

Although the draft BMP guidance document mentions various options for managing obsolete and decommissioned military and commercial vessels (e.g., reuse of the vessel or parts of the vessel, recycling or scrapping, creating artificial reefs, and disposal on land or at sea), the purpose of the guidance document is to present information on the preparation of vessels when employing the vessel management option of artificial reefing. For this reason, there will not be a discussion pertaining to Navy’s vessel sinking exercises for training (i.e., SINKEX). SINKEX (short for SINKing EXercise) involves the use of obsolete military vessels for target practice by the U.S. Navy, with the consequent sinking of the vessel. The SINKEX program is regulated under an EPA Ocean Dumping Act general permit issued by EPA in 1977 (40 CFR 229.2) and a 1999 interpretation of that permit regarding PCB-related requirements. Under this permit, Navy is required to remove to the maximum extent practicable all materials which may degrade the marine environment. The clean-up requirements for a SINKEX vessel are already established under the Ocean Dumping Act general permit; therefore, the BMP guidance document would not be applicable.

The final BMP guidance document does not highlight the placement of vessels as breakwaters or other types of barriers as a management option for obsolete vessels. Upon further consideration of this in-water use of obsolete vessels, MARAD and EPA removed all related discussions from the guidance document.

Comment # J-I-8:

2. Statutory Requirements. (Executive Summary), also p.6. The BMPs state: “There are statutory requirements and associated regulations as well as permit processes applicable to the process of preparing a vessel for reefing that are not highlighted in this document.” The working group who developed these BMPS was well represented by members from at least seven different federal agencies. State agency representation was notable by its absence. **Recommendation:** Since representatives from a number of different federal agencies provide the full input to create this document, a more complete list of the pertinent federal statutes, regulations, and other legal instruments of these agencies as relates to the preparation and reefing of vessels, as artificial reefs *should be included in this document*. A good starter list has already been provided in Appendix B (pp. 40-42). That list merely needs to be augmented.

Response to Comment # J-I-8:

In the process of preparing a vessel for reefing, there are requirements and regulations, including permit processes, appropriate disposal of waste generated during vessel clean-up/preparation, and vessel inspections by appropriate authorities to consider that are not

discussed in great detail in this document, with the exception of TSCA requirements applicable to PCBs. However, in response to this comment and others of a similar nature, EPA revised significantly Appendix B to provide an overview of principal federal environmental statutes potentially affecting preparation or placement of a vessel for use as an artificial reef. Further, other than siting considerations that would affect how a vessel is prepared for use as an artificial reef, this document does not detail the legal requirements applicable to transfer, siting, or sinking of vessels as artificial reefs in vessel-to-reef projects, except for the overview offered in Appendix B.

The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of interest. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized. On a case-by-case basis, additional federal statutes also may apply, though the federal statutes identified in Appendix B would be most relevant for the preparation of a vessel for use as an artificial reef. The final preparation plan for any particular artificial reef project will necessarily be vessel-specific, and will depend on the characteristics of the vessel and final permitted artificial reef construction site, as well as regulatory considerations. State and local laws also may apply to vessel preparation or placement for use as an artificial reef, and interested readers should consult with appropriate State and local authorities to identify such further requirements.

This Appendix identifies selected federal statutes relevant for consideration in preparation of a vessel for use as an artificial reef. For these statutes, the Appendix explains their potential relevance and briefly summarizes the relevant provisions. The first set of statutes briefly summarized are principal environmental laws which may be relevant to the removal of material from vessels or the disposal of such removed material. In addition, although this BMP guidance focuses on environmental best management practices for vessel preparation, for the reader's convenience the Appendix also briefly summarizes federal statutes establishing permit requirements for the actual placement of the vessel as an artificial reef. Finally, the Appendix briefly describes a number of other significant federal environmental statutes that may affect issuance of such permits or the actual conduct of placement activities. Readers also should be aware that in 2000, EPA published tips for regulatory compliance for ship scrapping, and that document contains additional guidance that may be useful in preparation of a vessel for use as an artificial reef. See www.epa.gov/oecaerth/resources/publications/civil/federal/shipscrapguide.pdf.

Comment # J-I-9:

For example there are no US Coast Guard regulation mentioned. Part of preparing a ship for reefing is knowing in advance where the vessel is going to be placed. Coast Guard regulations regarding navigational clearance issues and associated aid to navigation marking requirements and regulations authorizing Coast Guard to inspect vessels prior to sinking should be included. Additionally US Army Corps has specific CFRs related to artificial reefs that could be cited.

Response to Comment # J-I-9:

Under 10 U.S.C. 7306b(c), preparation of a vessel for use as an artificial reef needs to be conducted in accordance with “any applicable federal laws.” The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of interest. EPA did not intend that Appendix B of the BMP guidance document would provide an exhaustive list of every conceivably relevant statute to vessel-to-reef projects, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized.

With regard to the comment, Appendix B includes some relevant regulations that fall under the U.S. Army Corps of Engineers -- the Clean Water Act Section 404 and the Rivers and Harbors Act Section 10. As for the suggestion to include Coast Guard regulations regarding navigational clearance issues and associated aid to navigation, neither the guidance document nor Appendix B details the legal requirements applicable to navigational clearance issues or associated aid to navigation marking requirements.

As for the commenter’s request to include “regulations authorizing Coast Guard to inspect vessels prior to sinking,” there are no U.S. Coast Guard (USCG) regulations applicable to vessel reefing, other than those that apply generally to any "obstructions to navigation" in waters subject to USCG jurisdiction. It is USCG’s understanding that the location of any intended reefing project will not, by definition, negatively impact navigation safety. Therefore, USCG inspection of the vessel prior to reefing is not legally required. However, USCG advises that it is studying the issue, and further advises that it may consider any particular vessel reefing request for inspection, under appropriate policies, yet to be developed and if resources permit. If USCG chooses to assist EPA by offering to inspect a vessel (either using its own personnel or the personnel of another organization), USCG may use the clean-up provisions of the vessel ocean dumping permit (40 CFR 229.3(a)(3)) as a guide for advising EPA on the USCG assessments regarding whether reefing the vessel will unacceptably degrade the marine environment. In this instance, the standards developed under the Marine Protection, Research, and Sanctuaries Act (MPRSA) would be used only from the perspective of vessel inspection prior to reefing, even though reefing a vessel is not considered ocean dumping under MPRSA.

Comment # J-I-10:

The executive summary statement could be modified to say: “Federal statutory requirements, laws, executive orders federal permit processes and other legal authorities as may apply to the reefing of vessels are summarized in Appendix B. Additional state and local laws that may apply are not the purview of this document.”

Response to Comment # J-I-10:

Revisions to the draft BMP guidance document have resulted in the deletion of the sentence that is the focus of this comment. The final BMP guidance now incorporates the

purpose and intent of Appendix B in the “Introduction” section of the guidance, and incorporates a revamped Appendix B later in the document. Now, Appendix B only identifies relevant federal “laws” for consideration because the possible audiences for the document include not only federal governmental agencies, but also State and private entities.

The information in Appendix B is intended only for the convenience of the reader in order to provide a useful starting point for identifying the principal environmental statutes of interest. The Appendix is not intended to be an exhaustive list of every conceivably relevant statute, nor do the brief summaries in this list alter or replace any requirements, regulations, or applicable guidance under those statutes that are summarized. On a case-by-case basis, additional federal statutes also may apply, though the federal statutes identified in Appendix B would be most relevant for the preparation of a vessel for use as an artificial reef.

State and local laws also may apply to vessel preparation or placement for use as an artificial reef, and interested readers should consult with appropriate State and local authorities to identify such further requirements.

For further information regarding the purpose and intent of Appendix B, *see Response to Comment # J-I-8*.

Comment # J-I-11:

Laws and regulations specific to the pollutants addressed should be included in those sections discussing the pollutants as was done with PCBs but unfortunately not with some other potential pollutants mentioned (asbestos, petroleum products).

Response to Comment # J-I-11:

With the exception of the discussion regarding materials containing PCBs regulated for disposal levels, EPA does not attempt to identify whether and how other environmental laws may “apply.” The BMP guidance document’s discussion of PCBs is the exception because EPA has promulgated specific regulations concerning their disposal.

Comment # J-I-12:

3. **Appendix B p.40.** The Army Corps permitting Authority is under the Rivers and Harbors Authorization Act of 1899 (the year “1866” is listed in the document for this Act).

Response to Comment # J-I-12:

EPA has incorporated the suggested change in the final guidance document.

Comment # J-I-13:

4. Objectives of the Guidance Document p.7 Recommendation: Objective 4 states: “include measures that will ‘enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels’” I would think that this BMP document would also enhance the utility of the artificial reef program of the U.S. Navy who has the authority to transfer vessels stricken from the Naval Vessel Register for use as artificial reefs. The navy’s program should be mentioned under this objective, if this is considered a broader document objective and not restricted to the Act that set forth the objectives.. On page 8 paragraph 2, once again only the Maritime Administration is mentioned when there is discussion about the BMPs enhancing artificial reefing as an option for disposing vessels. The Navy should not be excluded since it is now in the reefing business with the preparation of its reefing pilot project, the *Oriskany*.

Response to Comment # J-I-13:

EPA and MARAD developed this guidance document to satisfy Section 3516 of the National Defense Authorization Act (Act) for Fiscal Year 2004, which requires that MARAD and EPA jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs. The BMP guidance is applicable to obsolete and decommissioned military and commercial vessels intended for use as artificial reefs. The Act specifically states that one of the objectives of the BMP guidance is to include measures that will “enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels.” As the use of vessels as artificial reefs is becoming a more common management option for obsolete MARAD vessels, as well as Navy vessels, the BMP guidance document can also enhance the Navy’s artificial reefing program. The guidance is intended to promote a consistent, national approach for preparing vessels for use as artificial reefs. The development of this guidance is timely -- currently, no guidance of this kind is available.

Comment # J-I-14:

5. Salvageable portions of the vessel p. 8 second paragraph of second bullet.

Question/Clarification: The document recommends the removal of salvageable items first. It would seem that removal of salvageable items first would: 1) delay the more critical environmental cleaning and preparation process or interfere with the cleanup process if salvage were occurring simultaneously. In a donation situation, what is to prevent a salver from stripping the vessel of all salvageable material (a labor intensive process that is time consuming and costs money and ultimately recoups only a fraction of the cost to clean a vessel) then stating that there are insufficient funds and resources to clean the vessel to the BMP standards? There is at least one documented case of a contractor leaving town after the vessel was stripped of salvageable material with the formal cleanup having barely started (first contractor on *Spiegel Grove* cleanup;). Assumptions made regarding money to be made on non ferrous metal in a fluctuating scrap market shouldn’t be a determining factor as to whether the vessel can be properly cleaned. Shouldn’t funds be available to fully cover the vessel environmental cleaning and preparation process, independent of what the contractor hopes to make off the scrap material? If, so then there shouldn’t

be an issue of first cleaning the vessel to BMP standards, then once approved, allow the contractor to move into a salvage mode. I'd be interested in a response to this concept of reversing the process-cleaning first, salvage of materials after the cleaning is substantially complete and only then with clear direction and understanding between the contractor and the vessel owner of what can and cannot be removed for scrap.

Response to Comment # J-I-14:

EPA recognizes that there are a number of initial vessel preparation approaches that could influence the time, effort, and cost of preparing/cleaning a vessel. The document recommends salvage operations prior to clean-up, as removing items for salvage eliminates the need to clean them in the vessel's preparations for sinking. Reversing the process, however, may result in an unnecessary expenditure of resources to clean items that will not remain on the vessel. EPA addressed the comment as follows:

“Some portions of a candidate vessel may be economically salvageable. Any such salvage operations should occur in a manner that will minimize debris and contamination with oils or other products that have to be cleaned up at a later date. This activity should allow for improved access for subsequent clean-up efforts, and the salvage proceeds may help offset some costs for vessel preparation.”

Salvage operations should not delay the environmental clean-up or preparation process. Rather they should facilitate the clean-up process and “allow for improved access for subsequent clean-up efforts.” The document in no way advocates relying on the sales of scrap material to fund the clean-up effort, but merely recognizes environmental and economic benefits from salvage operations/efforts.

Comment # J-I-15:

6. Author's last name incorrectly spelled in references cited, p.45: Recommendation:
Change Matore, R.M. to Martore, R.M.

Response to Comment # J-I-15:

The suggested change, as presented above, has been incorporated in the final guidance document.

Comment # J-I-16:

7. PCB disposal permit under 40 CFR 761.62(c) (p. 27). Recommendation: It is possible that there may be instances where a federal entity such as MARAD may not be responsible for the cleaning of a vessel and some other vessel donation recipient/ sponsor (state or local government) elects to seek a PCB disposal permit. I suggest that a paragraph should be added to discuss what is involved in actually securing an EPA PCB risk-based disposal permit. The paragraph makes it sound like there's no problem from a timeline, or cost standpoint and that nothing is really needed other than just asking for a permit. I think human health and environmental risk assessment issues

should be discussed briefly and an explanation given of how that factors into EPA's deciding whether or not to issue a disposal permit. There are timeline, risk assessment preparation costs, other procedural and evaluation issues that must be taken into account particularly when dealing with non generic vessels, site locations, cultural/population differences etc. Without having a realistic sense of what is involved in procuring a PCB disposal permit, parties with lesser resources who assume they will save money leaving bulk solid PCB materials on board will be lulled into believing that rapidly securing such a permit is a sure thing. Then they suddenly find themselves unable to meet requirements for extended dock rental associated with the time frame involved in evaluating a permit request and EPA protocol involved in actually issuing the document. It is conceivable the sponsor could find himself stuck halfway through a cleanup process for which no bulk disposal authorization is ever issued. The sponsor might then be unable to financially comply with requirements of removing all PCBs at levels of 50 ppm or greater because their vessel cleaning budget was dependent leaving PCB bulk materials on the vessel in order make the project economically viable. I also want to point out that this further highlights the disadvantage of a local government, a private sponsor or even a state receiving a vessel donation and embarking on a cleanup effort with without an upfront resolution as to the treatment of PCBs over 50 ppm proposed to be left on board.

Response to Comment # J-I-16:

EPA has revised the PCB chapter to include information on obtaining a risk-based PCB disposal approval. However, it is not practical to lay out a specific approval process, because each application is considered on its own merits and situation. The following information pertaining to securing an EPA PCB risk-based disposal approval has been incorporated in the PCB chapter of the final guidance document:

“While the complete removal of all manufactured products containing ≥ 50 ppm of solid PCBs is recommended, EPA recognizes that in some vessels it may not be feasible to identify and remove every such item. If such materials cannot be feasibly identified and/or removed, an application to EPA for a risk-based approval to dispose of the PCB bulk product waste in a marine environment for purposes of creating an artificial reef is required pursuant to 40 CFR 761.62(c). (EPA's decision includes consideration of a risk assessment submitted by the applicant, and a public participation process. Please consult the responsible EPA office for more information.)”

The PCB chapter was revised further with the following information:

“Any vessel owner and/or sponsor should carefully consider the amount of time, resources and financial commitments necessary to address the identification, removal, and disposal of non-liquid PCB-containing materials and materials contaminated by spills of liquids containing PCBs before finally deciding if a vessel is suitable for reefing, and well in advance of commencing clean-up. EPA strongly recommends vessel owners and/or sponsors to begin discussions as soon as possible with the PCB coordinator for the EPA Region in which the vessel is proposed to be sunk. A list of EPA's current PCB coordinators may be found at www.epa.gov/pcb/coordin.html.”

The PCB chapter revisions also include information pertaining to the disposal approval requirements for materials containing PCBs as a result of spills. The following information pertaining to securing an EPA PCB risk-based disposal approval has been incorporated in the PCB chapter of the final guidance document:

“If there is no information regarding whether a spill occurred and/or the PCB concentration of any spilled liquid, design and implement a representative sampling plan to verify that there are no PCBs present in the areas surrounding the liquid-filled equipment or systems. If the sampling results indicate presence of PCBs as a result of a spill of liquids containing PCBs, remove the spill residue and the materials contaminated by the spill (e.g., remove paint from a contaminated surface such as a metal deck, strip the contaminated area down to bare metal in accordance with 40 CFR 761.79(b)(i)(B)). If spill residues or materials contaminated by PCB spills cannot be feasibly removed, an application to EPA for a risk-based approval to dispose of the PCBs in a marine environment for purposes of creating an artificial reef is required pursuant to 40 CFR 761.61(c). (EPA’s decision includes consideration of a risk assessment submitted by the applicant, and a public participation process. Please consult the responsible EPA office for more information.)”

Further, EPA recommends that a vessel owner or buyer carefully consider the cost and resources needed prior to initiating a reefing project and to consult with EPA as soon as possible.

Comment # J-I-17:

These comments do not represent an agency wide response but are an individual submittal based upon my personal review of the BMPs.

Response to Comment # J-I-17:

As this letter later notes, the FWC previously submitted general agency comments on the BMPs to the Florida State Clearing House through the Florida Department of Environmental Protection as part of a federal consistency review (Under 15 CFR 930 Subpart C federal agencies are required to furnish a consistency determination for the state’s concurrence or objection). The letters submitted and the respective responses can be found under Commenter Identifications “M” and “M-I.”

Jon Dodrill, Environmental Administrator
Florida Fish and Wildlife Conservation Commission
Division of Marine Fisheries Management
2590 Executive Center Circle East (Berkley Bldg)
Tallahassee, FL 32301. Ph. 850.922.4340. x 209; Email: Jon.Dodrill@MyFWC.com

The FWC previously submitted general agency comments on the BMPs to the Florida State Clearing House through the Florida Department of Environmental Protection as part of a federal consistency review (Under 15 CFR 930 Subpart C federal agencies are required to furnish a consistency determination for the state's concurrence or objection).

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0017

Author Date: October 1, 2004

Author: Carrie Selberg
Atlantic States Marine Fisheries Commission

Comment # K-1:

cselberg@asmfc.org

10/01/2004 11:03 AM

To: Group Ow-Docket@EPA

cc:

Subject: Attention Docket ID No. OW-2004-0003

Please see the attached comment letter regarding the Draft National guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs (Docket ID OW-2004-0003).

If you have any problems opening this attachment, please contact me. Thank you.
(See attached file: EPA_Oct04_Comment.doc)

Carrie Selberg

Atlantic States Marine Fisheries Commission

1444 'Eye' Street NW, 6th Floor

Washington DC 20005

202 289 6400, 202 289 6051 (fax)

cselberg@asmfc.org

Response to # K-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0017, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0018 (Commenter Identification "K-I") for the comment letter submitted, and EPA's response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. “*Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs.*” 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0018

Author Date: October 1, 2004

Author: John V. O’Shea
Atlantic States Marine Fisheries Commission

Comment # K-I-1:

Atlantic States Marine Fisheries Commission

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John I. Nelson, Jr. (NH), Chair
Preston Pate, Jr. (NC), Vice-Chair

John V. O’Shea
Executive Director

Working towards healthy, self-sustaining populations for all Atlantic coast fish species, or successful restoration well in progress, by the year 2015.

October 1, 2004

Benjamin H. Grumbles
Acting Assistant Administrator, Office of Water
Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington DC 20460

Attention Docket: ID No. OW-2004-0003

Dear Mr. Grumbles:

Thank you for the opportunity comment on the *Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs*. We support nationwide consistent standards for vessel preparation and the release and finalization of this document.

Response to Comment # K-I-1:

EPA appreciates the Commission’s consideration and commitment as we move forward to complete the final guidance document.

Comment # K-I-2:

The Atlantic coastal states working cooperatively through the Atlantic States Marine Fisheries Commission collectively manage the coastal fishery resources in state waters and many of our states have active artificial reef programs. We are currently working to develop a cooperative program with the Department of the Navy and the Maritime Administration to prepare ships under their respective authorities for deployment as artificial reefs. These best management practices are a critical element of this program. Some of our member states will be providing comments on your draft document and we ask that you take these into account.

Response to Comment # K-I-2:

EPA and MARAD developed this guidance document to satisfy Section 3516 of the National Defense Authorization Act (Act) for Fiscal Year 2004, which requires that MARAD and EPA jointly develop guidance recommending environmental best management practices to be used in the preparation of vessels for use as artificial reefs. The BMP guidance is applicable to obsolete and decommissioned military and commercial vessels intended for use as artificial reefs. The Act directs that one of the objectives of the BMP guidance is to include measures that will “enhance the utility of the Artificial Reefing Program of the Maritime Administration as an option for the disposal of obsolete vessels.” As the use of vessels as artificial reefs is becoming a more common management option for obsolete MARAD vessels, as well as Navy vessels, the BMP guidance document can enhance the Navy’s artificial reefing program as well. The guidance is intended to promote a consistent, national approach for preparing vessels for use as artificial reefs. The development of this guidance is timely -- currently, no guidance of this kind is available.

The BMP guidance document has specific applicability to Navy vessel-to-reef projects. EPA notes that a provision of the Act amended Title 10 of the United States Code by adding Section 7306b. New Section 7306b(a) authorizes the Secretary of the Navy to transfer vessels stricken from the Naval Vessel Register for use as an artificial reef. New Section 7306b(c) requires the Secretary of the Navy to ensure that the preparation of a vessel transferred pursuant to 10 U.S.C. Section 7306b(a) for use as an artificial reef is conducted in accordance with the environmental best management practices developed pursuant to 16 U.S.C. Section 1220 note and applicable environmental laws. The final BMP guidance’s Appendix A, “*Federal Statutes Related to the Transfer of Obsolete MARAD and Navy Vessels for Use as Artificial Reefs*,” provides the complete text of Section 1013 of the National Defense Authorization Act for Fiscal Year 2004, as well as MARAD’s authority to transfer obsolete vessels for artificial reefing under 16 U.S.C. 1220, et. seq.

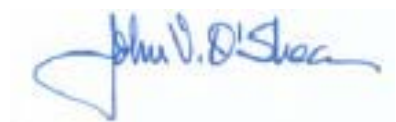
Comment # K-I-3:

Please let us know if the collective expertise of our Artificial Reef program managers can be of assistance in any future discussions your agency has regarding this issue. Our states would like to work closely with you as we move forward.

Response to Comment # K-I-3:

EPA appreciates the Commission's offer and commitment as we move forward to complete the final guidance document.

Sincerely,



John V. O'Shea

CONNECTICUT, DELAWARE, FLORIDA, GEORGIA, MAINE, MARYLAND, MASSACHUSETTS, NEW HAMPSHIRE, NEW JERSEY, NEW YORK, NORTH CAROLINA, PENNSYLVANIA, RHODE ISLAND, SOUTH CAROLINA, VIRGINIA

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0019

Author Date: October 1, 2004

Author: John V. O'Shea
Atlantic States Marine Fisheries Commission

Comment # K-II-1: Duplicate comment. Please see EPA-HQ-OW-2004-0003-0018.

Response to Comment # K-II-1:

Please refer to the response provided for EPA-HQ-OW-2004-0003-0018 (Commenter Identification "K-1").

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0020

Author Date: October 1, 2004

Author: Cindy Zipf
Clean Ocean Action

Comment # L-1:

"Cynthia Zipf (Clean Ocean Action)"

<Zipf@CleanOceanAction.org>

10/01/2004 05:01 PM

To: Group Ow-Docket@EPA
cc:science@CleanOceanAction.org, outreach@CleanOceanAction.org
Subject: Attention Docket ID No. OW-2004-0003

Thank you for the opportunity to comment.

Attached please find COA's

comments on the above referenced document. We look forward to your written reply.

Cindy Zipf

Executive Director

Clean Ocean Action

PO Box 505

Sandy Hook, NJ 07732

732-872-0111

732-872-8041 (fax)

Response to Comment # L-1:

The attached file, as mentioned above in the Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0020, was received. Please see proceeding Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0021 (Commenter Identification "L-I") for the comment letter submitted, and EPA's response to those comments.

Docket ID: EPA-HQ-OW-2004-0003. *"Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs."* 69 Fed. Reg. 46141 (August 2, 2004).

Public Comment

Docket Document ID: EPA-HQ-OW-2004-0003-0021

Author Date: October 1, 2004

Author: Cindy Zipf and Jennifer Samson
Clean Ocean Action

Comment # L-I-1:



Clean Ocean Action

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October 1, 2004
(Via Email)

Water Docket
USEPA
Mail Code 4101T
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Attn: OW-2004-0003

To Whom It May Concern:

Enclosed are comments on behalf of Clean Ocean Action (COA, representing 170 organizations), including the American Littoral Society, on the **USEPA Draft National Guidance: Best Management Practices for Preparing Vessels Intended to Create Artificial Reefs** released August 2, 2004.

COA is pleased with the release of the draft Best Management Practices (BMP) as a positive step towards creating consistency in the management and regulation of artificial reef materials. The document does a fairly good job of identifying materials of concern and provides specific information on where to find such materials on vessels and how to remove them prior to placement. However, there are important issues of concern regarding contaminants and language. In general, there are a few statements that appear to contradict the concept of preparing vessels in an environmentally-responsible manner and some of the language in the document needs to be clarified to prevent ambiguity and possible abuse. These comments are addressed in more detail below, beginning with the relevant section of the document in bold typeface.

Response to Comment # L-I-1:

EPA appreciates Clean Ocean Action's commitment to improved marine environments as we move forward to complete the final guidance document. We intend to clarify the relevant language that may appear to be ambiguous as identified by Clean Ocean Action in Public Comment Docket Document ID # EPA-HQ-OW-2004-0003-0021.

Comment # L-I-2:

Contaminants Issues:

**1. Guidance for Preparation of Ships to create Artificial Reef Habitat
Section (beginning on Pg 14)**

The Environmental Impacts subsections in each of the six contaminant sections contain little or no information on the effects of the contaminants on marine organisms. This information can be found in Appendix C. ***It is essential that this vital information be moved up front into the body of the guidelines within the sections addressing "Environmental Impacts."*** It is imperative that reef managers and clean-up project managers are informed and aware of the impacts of these contaminants on marine communities and understand the importance of thoroughly removing them from the vessel or isolating them from marine life for the duration of the reef.

Response to Comment # L-I-2:

EPA recognizes the significance of moving information on the environmental impacts of the materials of concern called out in the guidance from Appendix C to the main body of the document. EPA decided, however, to retain the information contained in Appendix C as an appendix and not to incorporate it into the main body of the document, for the

purpose of the appendix was for informational purposes only. The focus of the BMP guidance document is to provide guidelines for the preparation of obsolete and decommissioned military and commercial vessels in a manner that will help ensure that the marine environment will benefit from their use as artificial reefs.

The text provided in the draft BMP guidance document's Appendix C is an excerpt from the 2003 "Draft Policy Statement of the National Marine Sanctuary Program: Artificial Reef Permitting Guidelines" (2003 Draft Policy Statement). Please note that since the release of the draft BMP guidance document, the 2003 Draft Policy Statement is now a final document. Appendix C of the final BMP guidance document will provide information for the "2005 Policy Statement of the National Marine Sanctuary Program: Artificial Reef Permitting Guidelines."

Comment # L-I-3:

2. Oil and Grease Section (Pg 17, 3rd ¶)

It is not acceptable to leave dried/solidified oil and grease on the vessels as they can become re-suspended with exposure to seawater. All remnants of oil and grease should be cleaned and/or removed.

Response to Comment # L-I-3:

It may be acceptable to leave old oil and grease in place if it is determined visually to be dried/solidified and therefore is not likely to cause a sheen. EPA notes that as such, it is unlikely to become re-suspended with exposure to seawater. EPA has, however, revised the guidance in response to the above comment as follows:

"While the goal is to remove all oil and grease, it may be acceptable to leave old oil and grease in place if it is determined visually to be dried/solidified and therefore is not likely to cause a sheen."

Comment # L-I-4:

3. Asbestos Section (Pg. 21-23)

This section requires removal or encapsulating of certain asbestos and asbestos containing materials. However, on page 23 statements that allow some intact friable asbestos to remain on the vessel needs to be reconciled with statements in Appendix C regarding documented adverse effects of asbestos exposure on marine organisms, which also should include grazing and burrowing activities. In particular, the "very friable asbestos paste" and "friable asbestos" on pipe wrappings in the engine room would be expected to degrade in the marine environment.

Response to Comment # L-I-4:

The BMP guidance document states that "the primary source of friable asbestos is found on pipe wrappings around the main boilers and steam fittings." The guidance further states that "on most vessels the asbestos coating, which is 1 to 3 inches thick, is covered with

canvas and is usually painted.” This asbestos is in fact encapsulated, and as such, minimizes any potential direct impacts to the marine environment. As for the very friable asbestos paste, per the BMP guidance document, friable asbestos should be sealed as a precautionary measure to prevent releases of asbestos in high concentrations during the sinking event. EPA has revised the BMP guidance document in response to the above comment as follows:

“Certain boilers and piping are covered with a very friable asbestos paste. If such friable asbestos is not covered with canvas and/or paint, the friable asbestos should be sealed or encapsulated with an epoxy or other non-water soluble and non-toxic sealer.”

Comment # L-I-5:

4. PCB Section (Pgs 25-27)

In keeping with the stated mission of the Artificial Reef program to “enhance marine resources and benefit the marine environment” any reference to the possibility of allowing PCB-contaminated solid materials to remain on the ship by obtaining a disposal permit should be omitted from this document. The document should clarify that NO PCB-containing materials should be allowed to remain on the ship. The decision to allow solid materials containing PCBs ≤ 50 ppm to remain on the ship is contradictory. PCBs have been shown to bioaccumulate in aquatic organisms and biotransfer through the food web and should not be purposely introduced into a habitat area especially one that is designed to attract fish and fisherman.

Response to Comment # L-I-5:

Under the current regulations at 40 CFR Part 761, manufactured products containing less than 50 ppm of solid PCBs are not regulated for disposal, and therefore, EPA cannot require their removal and disposal. PCB regulations require the removal and disposal of PCB bulk product waste containing PCBs ≥ 50 ppm.

Manufactured products containing ≥ 50 ppm of solid PCBs that are to be disposed are considered PCB bulk product waste. Disposal of PCB bulk product waste other than as specified at 40 CFR 761.62(a) or (b) is allowed only if EPA finds that the disposal will not result in an unreasonable risk to human health or the environment (40 CFR 761.62(c)). As the disposal of PCB bulk waste via the sinking of a vessel is not a method listed at 40 CFR 761.62(a) or (b), EPA would need to determine that this method does not pose an unreasonable risk. As part of its decision, EPA would consider, among other things, the persistent and bioaccumulative nature of PCBs.

The narrative goal in the BMPs for PCBs has been modified to include as a goal the removal of materials contaminated by PCB spills (PCB remediation waste). For PCB spills that occurred between April 18, 1978, and July 1, 1979, and where the original source was ≥ 500 ppm PCBs, EPA regulations require the removal of all materials currently contaminated at any concentration of PCBs. For PCB spills that occurred after July 1,

1979, and where the original source was or ≥ 50 ppm PCBs, EPA regulations require the removal of all materials currently contaminated at any concentration of PCBs. Additionally, EPA's regulations require that all materials currently contaminated with ≥ 50 ppm PCBs as a result of spills (of any concentration, including spills that occurred prior to April 18, 1978), be removed. As with the disposal of PCB bulk waste via sinking a vessel, disposal of PCB remediation waste other than as specified at 40 CFR 761.61(a) or (b) is allowed only if EPA finds that the disposal will not result in an unreasonable risk to human health or the environment and issues a risk-based disposal approval (40 CFR 761.61(c)).

Comment # L-I-6:

Language Issues:

1. Placement of a vessel to create an artificial reef should: (Pg. 11)

Bullet 5: The use of the term “minimize” in reference to environmental, personal and public health risks is too vague and may allow interpretation that is contradictory to the intentions of this document.

Response to Comment # L-I-6:

EPA has clarified what is meant by “minimize” in this context by revising the text in question to now read:

“Placement of a vessel to create an artificial reef should minimize the potential for environmental risks related to site locations.”

Comment # L-I-7:

Bullet 7: It is not clear how “best information available” will be used.

Response to Comment # L-I-7:

In response to this comment, EPA clarified the text in question as follows:

“Placement of a vessel to create an artificial reef should be based on scientific information.”

Comment # L-I-8:

2. Siting of Artificial Reefs (Page 11, 2nd ¶)

“Artificial reefs *should not cause harm* to existing living marine resources and habitats.”

The statement “should not cause harm” suggests something significantly less rigorous than “enhance marine resources and benefit the marine environment” which is stated as primary mission in the **Executive Summary (Page 5, 2nd ¶)** and throughout the document.

Response to Comment # L-I-8:

In response to this comment, EPA clarified the text in question as follows:

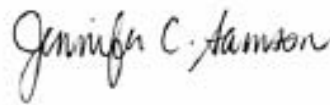
“Because the purpose of creating an artificial reef is to benefit the environment by enhancing aquatic habitat and marine resource, as well as providing an additional option for conserving, managing, and/or developing fisheries resources, artificial reefs should not cause harm to existing living marine resources and habitats.”

The incorporation of our comments into the final BMP would ensure proper protection of the marine environment and result in a document that COA would encourage state and federal agencies to adopt as part of their artificial reef programs.

Sincerely,



Cindy Zipf
Executive Director, COA



Jennifer Samson
Principal Scientist, COA

And for:
Tim Dillingham
Executive Director
American Littoral Society